IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 771 of 2002
with
CIVIL APPLICATION NO 7170 of 2002
in
SPECIAL CIVIL APPLICATION NO 7239 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATHAN UMRAVKHAN AMIRKHAN

Versus

SHAKINABEN W/D.UMRAVMIYA

Appearance:
1. LETTERS PATENT APPEAL No. 771/02 with CA 7170/02
MR AJ PATEL for Appellant
NOTICE SERVED for Respondent No. 1,6
UNSERVED-EXPIRED (N) for Respondent No. 2
..... for Respondent No. 2/1-2/3
MR JITENDRA M PATEL for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 02/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Widow Shakinaben and her sons - original petitioners had filed Special Civil Application No.7239 of 1989 before this Court under Article 227 of the Constitution of India, with following prayers made in Para : 21 of the Petition :

(a) to quash and set aside the order of the Mamlatdar and ALT dtd.23.10.1984 at Annexure : C, and the order of the Gujarat Revenue Tribunal passed in TEN.B.A.446 of 1985 dtd.5.8.1988 at Annexure:E, and also the order of the Gujarat Revenue Tribunal in Review Application No.TEN.C.A.43/88 dtd. 21.7.1989 at Annexure:F.

(b) to confirm the Judgment and order of the Deputy Collector, Kheda dtd.20.5.1985 in Tenancy Appeal No.628 of 1984 at Annexure:D, and

(c) to dismiss the application filed by the respondent under Sec.70-B of the Act, and

(d) to remand the case to decide according to law."

2. Before the learned Single Judge, on behalf of the original petitioners, it was submitted that the learned Mamlatdar and ALT, Thasra, had wrongly allowed the Application of the respondent by his order dated 23.10.1984, therefore, it was rightly set aside in Appeal filed by them before Deputy Collector on 28.5.1985. But, the Gujarat Revenue Tribunal (for short "Tribunal") wrongly allowed the Revision Application of the respondent and quashed and set aside the Judgment and order passed by the learned Deputy Collector by its order dated 5.8.1988. It was submitted that the learned Tribunal ought not to have exercised its revisional jurisdiction in favour of the respondent (present Appellant). It was also submitted that the respondent (present Appellant) had miserably failed to establish his claim of tenancy as he had neither incurred any expenditure nor carried out any agricultural operation

and failed to establish that he paid crop share or giving part of the crop to the land lady i.e. original petitioner No.1. It was also submitted before the learned Single Judge that the respondent (present Appellant) failed to prove that he had cultivated the Suit land for the last 20 years as claimed by him and that he had paid rent to the petitioner for the said land. It was also submitted that the respondent (present Appellant) did not even pay the land revenue. It was, therefore, submitted that the impugned Judgment and order dated 5.8.1988 passed by the learned Tribunal, allowing the Revision Application No.TEN.B.A. 446 of 1985 be quashed and set aside as the learned Tribunal exceeded in its revisional jurisdiction by re-appreciating the evidence in revision.

3 On behalf of the respondent - present Appellant it was contended that it was a case of concealed tenancy, therefore, he had not produced any documentary evidence about it, but it can be inferred from the evidence led before the Mamlatdar & ALT in this case that he was tenant. It was also submitted that after considering the entire evidence the learned Mamlatdar & ALT by his impugned order held that the respondent was in cultivating possession of the suit land for last 20 years and that he was giving share in the crop to the petitioner, therefore, the learned Dy. Collector was obviously wrong in allowing the Appeal and quashing and setting aside the order passed by the Mamlatdar & ALT, Thasra. It was also submitted that the approach of the learned Dy.Collector, in allowing the Appeal, was absolutely perfunctory. It was, therefore, submitted that the learned Tribunal was absolutely justified in exercising its revisional jurisdiction and quashing and setting aside the order passed by the Deputy Collector. Therefore, it was vehemently submitted by learned Counsel Shri A.J.Patel for the respondent - present Appellant before the learned Single Judge that when the learned Tribunal had exercised its revisional jurisdiction in favour of the respondent then this Court should not exercise its jurisdiction under Article 227 of the Constitution. In support of his submission, learned Counsel Shri A.J.Patel had placed reliance on the Judgments of this Court reported in the case of (i) DESAIBHAI SHANABHAI PATEL & ANR. v/s. BHULABHAI PRABHUDAS & ORS., reported in 1996 (1) GLH 170, (ii) RATHOD PUNJABHAI DEVABHAI, THROUGH HIS HEIRS & LR. RUKHIBEN WD/O PUNJABHAI & ORS. v/s. STATE OF GUJARAT & ORS. reported in 28(1) GLR 104, (iii) CHHAGAN RANCHHOD KUKVAVA v/s. GENERAL MANAGER, WESTERN RAILWAY, reported in 1998 (1) 461. and the Judgment of the Apex Court in

case of MOHD. YUNUS v/s. MOHD. MUSTAQIM & ORS., reported in AIR 1984 SC 38.

In the case of MOHD.YUNUS (Supra) Hon'ble Supreme Court held that..."A mere wrong decision without any thing more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision."

4. The above view is consistently followed by the Hon'ble Supreme Court till today. In its latest Judgment in case of SADHANA LODH v/s. NATIONAL INSURANCE CO.LTD., reported in AIR 2003 SC 1561, the Hon'ble Supreme Court has held that -

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or tribunal purports to have passed the order or to correct errors of law in the decision."

5. Learned Single Judge (Ms.R.M.Doshit,J.), after considering the rival submissions made by the learned Counsel for the parties before her, allowed the writ petition i.e. Special Civil Application No.7239 of 1989, filed by the original petitioners by her Judgment and Order dated 25.2.2002 and quashed and set aside the impugned Judgment and order dated 5.8.1988, passed by the learned Tribunal in Revision application No.TEN.BA.446/85 and restored the Judgment and order dated 28.5.1985, passed by the Deputy Collector, in favour of the original petitioners in Tenancy Appeal No.662 of 1984. According to Her Lordship, no finding was recorded by the learned Mamlatdar and ALT regarding the reliability of oral

evidence and the learned Mamlatdar and ALT had miserably failed to discuss the documentary evidence led before him and without appreciating the same he accepted the claim of tenancy of the respondents without recording specific findings in his favour, therefore, the learned Single Judge held that the impugned order passed by the Mamlatdar and ALT suffers from the vice of non-application of mind. The learned Single Judge also held that the Deputy Collector, after considering the evidence before him, including the oral evidence, allowed the Appeal by his impugned order dated 28.5.1985 and rightly set aside the impugned order passed by the Mamlatdar and ALT passed in favour of the respondent present Appellant. The learned Single Judge has also held that the Deputy Collector had also recorded the reasons by disbelieving the evidence and after considering the entire evidence on the record of the case the Dy. Collector dismissed the claim of tenancy of the respondent - present Appellant. The learned Single Judge also held that the Tribunal committed grave error in holding that the Deputy Collector had failed to appreciate the oral evidence correctly as it was not open to the Tribunal to re-appreciate the evidence in its revisional jurisdiction.

6. Thus, considering the submissions made by learned Counsel Shri A.J.Patel, appearing for the respondent before her about the limited jurisdiction of this Court under Article 227 of the Constitution, on facts of the present case Her Lordship held that ..."the petitioners have produced ample documentary evidence to prove their possession and personal cultivation of the Suit land all along. Besides, it is the petitioners who have paid the land revenue, education cess, etc. during the years in question." On these grounds, as well as, on the ground that there was no iota of documentary evidence led by the respondent to establish his possession for cultivation of the suit land, the learned Judge held that Deputy Collector was absolutely right in allowing the Appeal of the petitioners and dismissing the Application submitted by the respondent under Section 70(b) of the Act. Therefore, the learned Single Judge held that the learned Tribunal ought not to have exercised its revisional jurisdiction to up-set the findings recorded by the Dy.Collector, Kheda, in revision.

From the above it is clear that the learned Tribunal acceded its revisional jurisdiction in the Revision Application filed by the respondent present Appellant. Therefore, the learned Single Judge had to exercise her jurisdiction under Article 227 of the

Constitution and accordingly she exercised her jurisdiction under Article 227 and quashed and set aside the impugned Judgment and order dated 5.8.1988, passed by the learned Tribunal in Revision Application No.TEN.BA 446/85 was quashed and set aside and restored the order dated 28.5.1985 passed by the Dy.Collector, Kheda, in tenancy Appeal No.6628/84. This order of the ld. Single Judge is challenged in this Appeal.

7. From the above, it is very clear that not only the petition was filed by the respondent - original petitioner under Article 227 of the Constitution, but the learned Single Judge of this Court had also exercised her jurisdiction under Article 227 of the Constitution. In that view of the matter, in our considered opinion LPA against such order would not be maintainable and accordingly we accept the preliminary objection raised by learned Counsel Shri J.M.Patel for the respondents - original petitioners that LPA against such order passed by the learned Single Judge of this Court would not be maintainable as she has exercised her jurisdiction under Article 227 of the Constitution of India.

8. We must state that the learned Counsel shri A.J.Patel, who also appeared and argued before the learned Single Judge on behalf of the present appellant in the writ petition, took somersault and submitted before us that though the petition was labelled under Article 227 of the Constitution, it was a petition under Article 226 of the Constitution and the learned Judge also exercised her jurisdiction under Article 226 of the Constitution and not under Article 227 of the Constitution, therefore, this Appeal against Her Lordship's order would be maintainable before this Court. This does not lie good in the mouth of learned Counsel for the Appellant original respondent. It seems that after he lost before the learned Single Judge in the writ petition, now totally different submission is made before us in this LPA that the petition filed by the respondent - original petitioner before this Court was under Article 226 and not under Article 227 of the Constitution. All the Judgments cited by learned Counsel Shri A.J.Patel before the learned Single Judge were on the point of limited jurisdiction of this Court under Article 227 of the Constitution as this Court has limited jurisdiction under Article 227 of the Constitution and such jurisdiction has to be exercised as per the guidelines laid down by the Apex Court in its judgments delivered in the cases of Mohd. Yunus and Sadhna Lodh (Supra), etc. As stated above, the learned Single Judge, after considering the order passed by the Mamlatdar and ALT,

Deputy Collector and the Tribunal, held that the impugned order passed by the Mamlatdar & ALT in this case suffers from total non-application of mind as he miserably failed to appreciate the oral as well as documentary evidence led before him on both point of possession and cultivation of land by the present Appellant. The learned Judge has also held that when the Dy.Collector, after due appreciation of evidence, allowed the Appeal and set aside the order passed by the Mamlatdar & ALT in Appeal then it was not open to the Tribunal to re-appreciate the evidence in its revisional jurisdiction.

Thus, it is clear that the learned Tribunal acceded in its revisional jurisdiction and in such type of cases when there was jurisdictional error then this Court had to intervene. Under the circumstances when the learned Single Judge of this Court exercised her limited jurisdiction under Article 227 of the Constitution and interfered with the impugned order passed by the learned Tribunal and allowed the writ petition then such order cannot be disturbed in LPA even if it was maintainable.

9. In view of the above discussion, this Appeal fails and is hereby dismissed. Notice discharged. No order as to costs.

Civil Application No.7170 of 2002 is dismissed as the main LPA No.771 of 2002 is dismissed. Notice discharged. Interim order of status-quo is vacated forthwith.

(B.J.Shethna, J.)
Date : July 02, 2004
(M. C. Patel, J.)
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